



**MCI Telecommunications
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ORIGINAL

November 17, 1998

Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 500
Washington, DC 20554

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

Ex Parte

Re: Implementation of the Subscriber Carrier Selection Changes Provisions of the
Telecommunications Act of 1996; CC Docket No. 94-129

Dear Ms. Salas:

On November 17, 1998, Leonard Sawicki, Paul Eskildsen, Mary J. Sisak and I met with Larry Strickling, Richard Cameron, Glenn Reynolds and Yog Varma to discuss the above-referenced proceeding. MCI WorldCom, Inc. (MCI WorldCom) urges the FCC to act soon to adopt national regulations to prevent slamming as discussed herein. MCI WorldCom continues to believe that the single most effective method to prevent slamming is mandatory independent third party verification for all residential customer carrier switches. MCI WorldCom also believes that the establishment of a neutral third party Primary Carrier (PC) Administrator could be an additional method to prevent unauthorized conversions and anticompetitive activity on the part of incumbent carriers. These mechanisms, by preventing unauthorized conversions in the first place, are the most pro-consumer mechanisms that the FCC can adopt.

When adopting its regulations, the FCC should impose the minimum requirements necessary to protect consumers and ensure that the requirements do not unnecessarily limit the ability of customers to easily switch carriers. MCI WorldCom and other interexchange carriers (IXCs) would never have made competitive inroads in the long distance market without an environment in which it is possible for customers to exercise choice and without such an environment local competition will not materialize. Simply put, the ability of customers to easily switch carriers was crucial to the development of long distance competition, remains important to the continued functioning of a competitive long distance market, and it will be crucial to the development of local competition.

Of course, now that customers are used to switching long distance carriers, many customers choose to switch and some customers do so often. A record number of customers switched long distance carriers last year -- 26 million according to one Yankee Group study. Customer awareness of the ability to switch also leads to awareness of unauthorized conversion complaints-- both those that result from mistakes and those that are the result of opportunistic carriers that are acting in a way that is inconsistent with the public interest.

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The challenge for the FCC, therefore, is to craft regulations that support a vibrantly competitive market with many customer choices that are easily exercised, while curbing bad acts and practices on the part of some carriers. The recent congressional legislation on unauthorized conversions, which failed on the last day of the session only because it was removed from the agenda for an unrelated reason, struck such a balance. While it did not become law, the bill should be considered as evidence of an approach to slamming regulation that both houses of Congress were willing to enact. A copy of the legislative compromise bill is attached.

In the past, MCI WorldCom has not supported a requirement that carriers refund all charges billed to customers who claim they are slamming victims, and continues to believe that such a provision is not the most effective way to prevent slamming. MCI WorldCom, however, did support the "Code of Subscriber Protection Practices" provision in the recent legislation, which would have required carriers to provide up to 30 days free service to consumers where the carrier could not produce evidence of complying with the FCC's PC change rules. Because carriers would have had the opportunity to demonstrate compliance with the FCC's rules before providing a credit, the legislation contained an important protection from the potential fraud that a free service provision could otherwise engender.

MCI WorldCom is not suggesting that the FCC "adopt" the legislation. In addition, there is a question as to whether the FCC has the jurisdiction to require carriers to provide free service in the case of an alleged unauthorized conversion. If, however, the FCC is inclined to do so, then MCI WorldCom strongly urges the FCC to adopt a rule similar to the compromise legislation. Thus, an FCC rule should require no more than a maximum of 30 days of free service and it should allow carriers the opportunity to assert compliance with the FCC's rules before free service is required. If, for example, a carrier performed third party verification to verify the customer's PC change, then that should be conclusive that there was no unauthorized conversion and the carrier should not be required to credit the customer for service. Importantly, any regulation must prohibit the local exchange carriers (LECs) from issuing any form of credits on behalf of accused IXCs until the IXC has been provided an opportunity to assert that it has complied with the FCC's verification rules.

Once a carrier credits a customer for service, the carrier should be free from fines and forfeitures or other FCC action. In addition, unintentional conversions caused, for example, by incorrectly inputting data should not count as an unauthorized conversion for purposes of the FCC assessing fines and forfeitures. Consumers, however, could still file complaints in either case.

The FCC should not -- in the guise of achieving a zero tolerance for slamming -- impose crushing, costly, inefficient and burdensome regulation. Overregulation and overprotection in this area might eliminate a handful of additional problems, but will also impose substantial burdens on carriers, raise costs (which will inevitably be borne by consumers in the form of higher rates), and create barriers to free and flexible choice. The Commission must recognize that an appropriate balance needs to be met between the desire to protect and eliminate a problem that impacts a tiny fraction of consumers, and ensuring an environment where consumers can

make phone service choices freely, flexibly and without paying the extra costs associated with overregulation.

MCI WorldCom also urges the FCC to adopt a rule to regulate the solicitation of PC "freezes" or other restrictions on the switching of a consumer's primary interexchange and local exchange carrier. Specifically, the FCC should make it clear that a PC freeze can be overridden by a third party verified PC change order.


In addition, MCI WorldCom urges the FCC to preempt inconsistent state laws. A myriad of different state requirements is confusing to consumers and results in consumers of the same interstate services being treated differently because of where they live. It also unnecessarily increases the cost of providing service, to the detriment of consumers. National carriers like MCI WorldCom achieve substantial efficiencies by selling, marketing, billing and servicing customers on a national basis. Forcing carriers to comply with widely inconsistent state requirements eliminates these efficiencies, and inevitably will result in higher operating costs, leading to higher consumer prices.

Finally, while MCI WorldCom does not minimize the very real concerns about slamming, the FCC also should acknowledge the role that competitive mischief and misinformation is having on this issue. Much of the press activity, and a significant number of consumer complaints, has in fact been generated or encouraged by the incumbent LECs (ILECs) who advance their interests by unfairly tarring IXCs and their competitors in the local toll market with baseless slamming allegations.

For example, ILECs accomplish these competitive mischief goals by turning customer service inquiries they receive from customers who have changed local toll service into slamming complaints. Frequently, customers have in fact authorized changes in their local toll service provider but do not fully understand the nature of local toll service. When the customer calls with a billing inquiry, ILEC representatives twist the inquiry and exploit consumer confusion about local toll service into slamming complaints.

The ILECs' tactics discourage customers from exercising their right to change services. This helps lock in ILEC local toll monopolies, and hardens consumers against change--a dynamic that ILECs are counting on to help them retain local customers once competition comes to the residential local service environment. It would be unfortunate if the FCC's actions in this docket have the effect of making the local market less contestable.

Sincerely,


Mary L. Brown

Attachment

cc: Lawrence Strickling
Dorothy Attwood
Thomas Power
James Casserly
Paul Gallant
Kyle Dixon
Kevin Martin
Anita Cheng
Richard Cameron
Glenn Reynolds
Yog Varma

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AMENDMENT NO. CAL. NO.

[STAFF WORKING DRAFT]

October 20, 1998

Purpose: To offer an amendment in the nature of a substitute for H.R. 3888.

IN THE SENATE OF THE UNITED STATES— 105th Cong., 2 Sess.

H.R. 3888, 105th Congress, 2 Session

OCTOBER —, 1998

() Referred to the Committee on _____ and
ordered to be printed

() Ordered to lie on the table and to be printed

INTENDED to be proposed by Mr. MCIN (for himself and
Ms. COLLINS)

Viz: Strike out all after the enacting clause and insert the
following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the "Telecommunications
3 Competition and Consumer Protection Act of 1998".

4 TITLE I—SLAMMING

5 SEC. 101. IMPROVED PROTECTION FOR CONSUMERS.

6 (a) CONSUMER PROTECTION PRACTICES—Section

7 258 of the Communications Act of 1934 (47 U.S.C. 258)

8 is amended to read as follows:

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1 "SEC. 258. ILLEGAL CHANGES IN SUBSCRIBER SELECTIONS

2 OF CARRIERS.

3 "(a) ALTERNATIVE MODES OF REGULATION.—

4 "(1) INDUSTRY/COMMISSION CODE.—Within

5 180 days after the date of enactment of the Tele-

6 communications Competition and Consumer Protec-

7 tion Act of 1998, the Commission, after consulting

8 with the Federal Trade Commission and representa-

9 tives of telecommunications carriers providing tele-

10 phone toll service and telephone exchange service,

11 State commissions, and consumers, and considering

12 any proposals developed by such representatives,

13 shall prescribe, after notice and public comment and

14 in accordance with subsection (b), a Code of Sub-

15 scriber Protection Practices (hereinafter in this sec-

16 tion referred as the 'Code') governing changes in a

17 subscriber's selection of a provider of telephone ex-

18 change service or telephone toll service.

19 "(2) OBLIGATION TO COMPLY.—No tele-

20 communications carrier (including a reseller of tele-

21 communications services) shall submit or execute a

22 change in a subscriber's selection of a provider of

23 telephone exchange service or telephone toll service

24 except in accordance with—

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1 “(A) the Code, if such carrier elects to
2 comply with the Code in accordance with sub-
3 section (b)(2); or

4 “(B) the requirements of subsection (c),
5 if—

6 “(i) the carrier does not elect to com-
7 ply with the Code under subsection (b)(2);

8 or

9 “(ii) such election is revoked or with-
10 drawn.

11 “(b) MINIMUM PROVISIONS OF THE CODE.—

12 “(1) SUBSCRIBER PROTECTION PRACTICES—

13 The Code required by subsection (a)(1) shall include
14 provisions addressing the following:

15 “(A) IN GENERAL.—A telecommunications
16 carrier (including a reseller of telecommuni-
17 cations services) electing to comply with the
18 Code shall submit or execute a change in a sub-
19 scriber's selection of a provider of telephone ex-
20 change service or telephone toll service only in
21 accordance with the provisions of the Code.

22 “(B) NEGATIVE OPTION.—A telecommuni-
23 cations carrier shall not use negative option
24 marketing.

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1 “(C) V ERIFICATION.—A telecommuni-
2 cations carrier that submits the change to an
3 executing carrier, or that is both a submitting
4 and an executing carrier, shall verify the sub-
5 scriber's selection of the carrier in accordance
6 with procedures specified in the Code.

7 “(D) UNFAIR ~~AND~~ DECEPTIVE ACTS AND
8 PRACTICES—No telecommunications carrier,
9 nor any person acting on behalf of any such
10 carrier, shall engage in any unfair or deceptive
11 acts or practices in connection with the solicita-
12 tion of a change in a subscriber's selection of
13 a telecommunications carrier.

14 “(E) NOTIFICATION AND RIGHTS.—A tele-
15 communications carrier shall provide timely and
16 accurate notification to the subscriber in ac-
17 cordance with procedures specified in the Code.

18 “(F) SLAMMING LIABILITY AND REM-
19 EDIES.—

20 “(i) REQUIRED REIMBURSEMENT AND
21 CREDIT.—A telecommunications carrier
22 that has improperly changed the subscrib-
23 er's selection of a telecommunications car-
24 rier without authorization, shall at a mini-
25 mum—

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1 "(I) reimburse the subscriber for
2 the fees associated with switching the
3 subscriber back to their original car-
4 rier; and

5 "(II) provide a credit for any
6 telecommunications charges incurred
7 by the subscriber during the period,
8 not to exceed 30 days, while that sub-
9 scriber was improperly presubscribed.

10 "(ii) PROCEDURES--The Code shall
11 prescribe procedures by which--

12 "(I) a subscriber may make an
13 allegation of a violation under clause
14 (i);

15 "(II) the telecommunications car-
16 rier may rebut such allegation;

17 "(III) the subscriber may, with-
18 out undue delay, burden, or expense,
19 challenge the rebuttal; and

20 " "(IV) resolve any administrative
21 review of such an allegation within 75
22 days after receipt of an appeal.

23 "(G) RECORDKEEPING--A telecommuni-
24 cations carrier shall make and maintain a
25 record of the verification process and shall pro-

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1 vide a copy to the subscriber immediately upon
2 request.

3 "(H) QUALITY CONTROL--A telecommuni-
4 cations carrier shall institute a quality control
5 program to prevent inadvertent changes in a
6 subscriber's selection of a carrier.

7 "(I) I NDEPENDENT AUDITS.--A tele-
8 communications carrier shall provide the Com-
9 mission with an independent audit regarding its
10 compliance with the Code at intervals pre-
11 scribed by the Code. The Commission may re-
12 quire a telecommunications carrier to provide
13 an independent audit on a more frequent basis
14 if there is evidence that such telecommuni-
15 cations carrier is violating the Code.

16 "(2) E LECTION BY CARRIERS--Each tele-
17 communications carrier electing to comply with the
18 Code shall file with the Commission within 20 days
19 after the adoption of the Code, or within 20 days
20 after commencing operations as a telecommuni-
21 cations carrier, a statement electing the Code to gov-
22 ern such carrier's submission or execution of a
23 change in a customer's selection of a provider of
24 telephone exchange service or telephone toll service.
25 Such election by a carrier may not be revoked or

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1 withdrawn unless the Commission finds that there is
2 good cause therefor, including a determination that
3 the carrier has failed to adhere in good faith to the
4 applicable provisions of the Code, and that the rev-
5 ocation or withdrawal is in the public interest. Any
6 telecommunications carrier that fails to elect to com-
7 ply with the Code shall be deemed to have elected
8 to be governed by the subsection (c) and the Com-
9 mission's regulations thereunder.

10 "(3) PENALTIES AVAILABLE.—Nothing in this
11 subsection or in any regulations thereunder shall be
12 construed as limiting the application of section 503
13 to violations of the Code.

14 "(c) REGULATIONS OF CARRIERS NOT ELECTING TO
15 COMPLY WITH CODE.—

16 "(1) IN GENERAL.—A telecommunications car-
17 rier (including a reseller of telecommunications serv-
18 ices) that has not elected to comply with the Code
19 under subsection (b), or as to which the election has
20 been withdrawn or revoked, shall not submit or exe-
21 cute a change in a subscriber's selection of a pro-
22 vider of telephone exchange service or telephone toll
23 service except in accordance with this subsection and
24 such verification procedures as the Commission shall
25 prescribe.

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1 “(2) VERIFICATION.—

2 “(A) IN GENERAL.—In order to verify a
3 subscriber's selection of a telephone exchange
4 service or telephone toll service provider under
5 this subsection, the telecommunications carrier
6 submitting the change to an executing carrier
7 shall, at a minimum, require the subscriber—

8 “(i) to affirm that the subscriber is
9 authorized to select the provider of that
10 service for the telephone number in ques-
11 tion;

12 “(ii) to acknowledge the type of serv-
13 ice to be changed as a result of the selec-
14 tion;

15 “(iii) to affirm the subscriber's intent
16 to select the provider as the provider of
17 that service;

18 “(iv) to acknowledge that the selection
19 of the provider will result in a change in
20 providers of that service; and

21 “(v) to provide such other information
22 as the Commission considers appropriate
23 for the protection of the subscriber.

24 “(B) ADDITIONAL REQUIREMENTS.—The
25 procedures prescribed by the Commission to

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1 verify a subscriber's selection of a provider

2 shall—

3 "(i) preclude the use of negative op-
4 tion marketing;

5 "(ii) provide for a complete copy of
6 verification of a change in telephone ex-
7 change service or telephone toll service pro-
8 vider in oral, written, or electronic form;

9 "(iii) require the retention of such
10 verification in such manner and form and
11 for such time as the Commission considers
12 appropriate;

13 "(iv) mandate that verification occur
14 in the same language as that in which the
15 change was solicited; and

16 "(v) provide for verification to be
17 made available to a subscriber on request.

18 "(C) NOTICE TO SUBSCRIBER—Whenever
19 a telecommunication carrier submits a change
20 in a subscriber's selection of a provider of tele-
21 phone exchange service or telephone toll service,
22 such telecommunications carrier shall clearly
23 notify the subscriber in writing, not more than
24 15 days after the change is submitted to the
25 executing carrier—

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- 1 "(i) of the subscriber's new carrier;
- 2 and
- 3 "(ii) that the subscriber may request
- 4 information regarding the date on which
- 5 the change was agreed to and the name of
- 6 the individual who authorized the change.
- 7 "(3) LIABILITY FOR VIOLATIONS.—
- 8 "(A) NOTIFICATION OF CHANGE.—The
- 9 first bill issued after the effective date of a
- 10 change in a subscriber's provider of telephone
- 11 exchange service or telephone toll service by the
- 12 executing carrier for such change shall—
- 13 "(i) prominently disclose the change
- 14 in provider and the effective date of such
- 15 change;
- 16 "(ii) contain the name and toll-free
- 17 number of any telecommunications carrier
- 18 for such new service; and
- 19 "(iii) direct the subscriber to contact
- 20 the executing carrier if the subscriber be-
- 21 lieves that such change was not authorized
- 22 and that the change was made in violation
- 23 of this subsection, and contain the toll-free
- 24 number by which to make such contact.

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1 “(B) AUTOMATIC SWITCHBACK OF SERV-
2 ICE AND CREDIT TO CONSUMER OF CHARGES--
3 “(i) OBLIGATIONS OF EXECUTING
4 CARRIER--If a subscriber of telephone ex-
5 change service or telephone toll service
6 makes an allegation, orally or in writing, to
7 the executing carrier that a violation of
8 this subsection has occurred with respect
9 to such subscriber--
10 “(I) the executing carrier shall,
11 without charge to the subscriber, exe-
12 cute an immediate change in the pro-
13 vider of the telephone service that is
14 the subject of the allegation to restore
15 the previous provider of such service
16 for the subscriber, as reflected in the
17 records of the executing carrier;
18 “(II) the executing carrier shall
19 provide an immediate credit to the
20 subscriber's account for any charges
21 for executing the original change of
22 service provider;
23 “(III) if the executing carrier
24 conducts billing for the carrier that is
25 the subject of the allegation, the exe-

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1 cutting carrier shall provide an imme-
2 diate credit to the subscriber's ac-
3 count for such service, in an amount
4 equal to any charges for the telephone
5 service that is the subject of the alle-
6 gation incurred during the period--
7 "(aa) beginning upon the
8 date of the change of service that
9 is the subject of the allegation;
10 and
11 "(bb) ending on the earlier
12 of the date that the subscriber is
13 restored to the previous provider,
14 or 30 days after the date the bill
15 described in subparagraph (A) is
16 issued; and
17 "(IV) the executing carrier shall
18 recover the costs of executing the
19 change in provider to restore the pre-
20 vious provider, and any credits pro-
21 vided under subclauses (II) and (III),
22 by recourse to the provider that is the
23 subject of the allegation.
24 "(ii) OBLIGATIONS OF CARRIERS NOT
25 BILLING THROUGH EXECUTING CAR-

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1 RIERS--If a subscriber of telephone ex-
2 change service or telephone toll service
3 transmits, orally or in writing, to any car-
4 rier that does not use an executing carrier
5 to conduct billing an allegation that a vio-
6 lation of this subsection has occurred with
7 respect to such subscriber, the carrier shall
8 provide an immediate credit to the sub-
9 scriber's account for such service, and the
10 subscriber shall, except as provided in sub-
11 paragraph (C)(iii), be discharged from li-
12 ability, for an amount equal to any charges
13 for the telephone service that is the subject
14 of the allegation incurred during the pe-
15 riod--

16 "(I) beginning upon the date of
17 the change of service that is the sub-
18 ject of the allegation; and

19 "(II) ending on the earlier of the
20 date that the subscriber is restored to
21 the previous provider, or 30 days after
22 the date the bill described in subpara-
23 graph (A) is issued.

24 "(iii) TIME LIMITATION.--This sub-
25 paragraph shall apply only to allegations

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1 made by subscribers before the expiration
2 of the 1-year period that begins on the
3 issuance of the bill described in subpara-
4 graph (A).

5 "(C) PROCEDURE FOR CARRIER REM-
6 EDY.-

7 "(i) IN GENERAL.—The Commission
8 shall, by rule, establish a procedure for
9 rendering determinations with respect to
10 violations of this subsection. Such proce-
11 dure shall permit such determinations to
12 be made upon the filing of (I) a complaint
13 by a telecommunications carrier that was
14 providing telephone exchange service or
15 telephone toll service to a subscriber before
16 the occurrence of an alleged violation, and
17 seeking damages under clause (ii), or (II)
18 a complaint by a telecommunications car-
19 rier that was providing services after the
20 alleged violation, and seeking a reinstate-
21 ment of charges under clause (iii). Either
22 such complaint shall be filed not later than
23 6 months after the date on which any sub-
24 scriber whose allegation is included in the
25 complaint submitted an allegation of the

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1 violation to the executing carrier under
2 subparagraph (B)(i). Either such com-
3 plaint may seek determinations under this
4 paragraph with respect to multiple alleged
5 violations in accordance with such proce-
6 dures as the Commission shall establish in
7 the rules prescribed under this subpara-
8 graph.

9 “(ii) DETERMINATION OF VIOLATION
10 AND REMEDIES—In a proceeding under
11 this subparagraph, if the Commission de-
12 termines that a violation of this subsection
13 has occurred, other than an inadvertent or
14 unintentional violation, the Commission
15 shall award damages—

16 “(i) to the telecommunications
17 carrier filing the complaint, in an
18 amount equal to the sum of (aa) the
19 gross amount of charges that the car-
20 rier would have received from the sub-
21 scriber during the violation, and (bb)
22 \$500 per violation; and

23 “(ii) to the subscriber that was
24 subjected to the violation, in the
25 amount of \$500.

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1 “(iii) DETERMINATION OF NO VIOLA-
2 TION.—If the Commission determines that
3 a violation of this subsection has not oc-
4 curred, the Commission shall order that
5 any credit provided to the subscriber under
6 subparagraph (B)(ii) be reversed, or that
7 the carrier may resubmit a bill for the
8 amount of the credit to the subscriber not-
9 withstanding any discharge under subpara-
10 graph (B)(ii).

11 “(iv) SPEEDY RESOLUTION OF COM-
12 PLAINTS.—The procedure established
13 under this subparagraph shall provide for
14 a determination of each complaint filed
15 under the procedure not later than 6
16 months after filing.

17 “(D) MAINTENANCE OF INFORMATION.—

18 “(i) IN GENERAL—The Commission
19 shall, by rule, require each executing car-
20 rier to maintain information regarding
21 each alleged violation of this subsection of
22 which the carrier has been notified.

23 “(ii) C ONTENTS—The information
24 required to be maintained pursuant to this
25 paragraph shall include, for each alleged

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1 violation of this subsection, the effective
2 date of the change of service involved in
3 the alleged violation, the name of the pro-
4 vider of the service to which the change
5 was made, the name, address, and tele-
6 phone number of the subscriber who was
7 subject to the alleged violation, and the
8 amount of any credit provided under sub-
9 paragraph (B)(ii).

10 "(iii) FORM.—The Commission shall
11 prescribe one or more computer data for-
12 mats for the maintenance of information
13 under this paragraph, which shall be de-
14 signed to facilitate submission and com-
15 pilation pursuant to this subparagraph.

16 "(iv) MONTHLY REPORTS.—Each exe-
17 cuting carrier shall, on not less than a
18 monthly basis, submit the information
19 maintained pursuant to this subparagraph
20 to the Commission.

21 "(v) ACCESS TO INFORMATION.—The
22 Commission shall make the information
23 submitted pursuant to clause (iv) available
24 upon request to any telecommunications
25 carrier. Any telecommunications carrier ob-

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1 taining access to such information shall
2 use such information exclusively for the
3 purposes of investigating, filing, or resolv-
4 ing complaints under this section.
5 “(4) CIVIL PENALTIES.—Unless the Commis-
6 sion determines that there are mitigating cir-
7 cumstances, violation of this subsection is punishable
8 by a forfeiture penalty under section 503 of not less
9 than \$40,000 for the first offense, and not less than
10 \$150,000 for each subsequent offense.
11 “(5) RECOVERY OF FORFEITURES.—The Com-
12 mission may take such action as may be necessary—
13 “(A) to collect any forfeitures it imposes
14 under this subsection; and
15 “(B) on behalf of any subscriber, to collect
16 any damages awarded the subscriber under this
17 subsection.
18 “(d) APPLICATION TO WIRELESS.—This section does
19 not apply to a provider of commercial mobile service.
20 “(e) COMMISSION REQUIREMENTS—
21 “(1) SEMI-ANNUAL REPORTS—Every 6 months,
22 the Commission shall compile and publish a report
23 ranking telecommunications carriers by the percent-
24 age of verified complaints, excluding those generated
25 by the carrier's unaffiliated resellers, compared to

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1 the number of the carrier's changes in a subscriber's
2 selection of a provider of telephone exchange service
3 and telephone toll service.

4 (2) INVESTIGATION.—If a telecommunications
5 carrier is listed among the 5 worst performers based
6 upon the percentage of verified complaints, excluding
7 those generated by the carrier's unaffiliated resell-
8 ers, compared to its number of carrier selection
9 changes in the semiannual reports 3 times in succes-
10 sion, the Commission shall investigate the carrier's
11 practices regarding subscribers' selections of provid-
12 ers of telephone exchange service and telephone toll
13 service. If the Commission finds that the carrier is
14 misrepresenting adherence to the Code or is willfully
15 and repeatedly changing subscribers' selections of
16 providers, the Commission shall find such carrier to
17 be in violation of this section and shall impose a civil
18 penalty on the carrier under section 503 of up to
19 \$1,000,000.

20 (3) CODE REVIEW.—Every 2 years, the Com-
21 mission shall review the Code to ensure its require-
22 ments adequately protect subscribers from improper
23 changes in a subscriber's selection of a provider of
24 telephone exchange service and telephone toll service.

25 (f) ACTIONS BY STATES.—

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1 “(1) N GENERAL.—Whenever an attorney gen-
2 eral of any State has reason to believe that the in-
3 terests of the residents of that State have been or
4 are being threatened or adversely affected because
5 any person has violated the Code or subsection (c),
6 or any rule or regulation prescribed by the Commis-
7 sion under subsection (c), the State may bring a
8 civil action on behalf of its residents in an appro-
9 priate district court of the United States to enjoin
10 such violation, to enforce compliance with such
11 Code, subsection, rule, or regulation, to obtain dam-
12 ages on behalf of their residents, or to obtain such
13 further and other relief as the court may deem ap-
14 propriate.

15 “(2) Notice.—The State shall serve prior writ-
16 ten notice of any civil action under paragraph (1)
17 upon the Commission and provide the Commission
18 with a copy of its complaint, except that if it is not
19 feasible for the State to provide such prior notice,
20 the State shall serve such notice immediately upon
21 instituting such action. Upon receiving a notice re-
22 specting a civil action, the Commission shall have
23 the right (A) to intervene in such action, (B) upon
24 so intervening, to be heard on all matters arising
25 therein, and (C) to file petitions for appeal.

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1 “(3) VENUE.—Any civil action brought under
2 this section in a district court of the United States
3 may be brought in the district wherein the defendant
4 is found or is an inhabitant or transacts business or
5 wherein the violation occurred or is occurring, and
6 process in such cases may be served in any district
7 in which the defendant is an inhabitant or wherever
8 the defendant may be found.

9 “(4) INVESTIGATORY POWERS.—For purposes
10 of bringing any civil action under paragraph (1),
11 nothing in this Act shall prevent the attorney gen-
12 eral from exercising the powers conferred on the at-
13 torney general by the laws of such State to conduct
14 investigations or to administer oaths or affirmations
15 or to compel the attendance of witnesses or the pro-
16 duction of documentary and other evidence.

17 “(5) EFFECT ON STATE COURT PROCEED-
18 INGS.—Nothing contained in this subsection shall
19 prohibit an authorized State official from proceeding
20 in State court on the basis of an alleged violation of
21 any general civil or criminal statute of such State.

22 “(6) LIMITATION.—Whenever the Commission
23 has instituted a civil action for violation of this sec-
24 tion or any rule or regulation thereunder, no State
25 may, during the pendency of such action instituted

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1 by the Commission, institute a civil action against
2 any defendant named in the Commission's complaint
3 for violation of any rule as alleged in the Commis-
4 sion's complaint.

5 "(7) ACTIONS BY OTHER STATE OFFICIALS.—In
6 addition to actions brought by an attorney general
7 of a State under paragraph (1), such an action may
8 be brought by officers of such State who are author-
9 ized by the State to bring actions in such State for
10 protection of consumers.

11 "(g) STATE LAW NOT PREEMPTED.—

12 "(1) IN GENERAL.—Nothing in this section or
13 in the regulations prescribed under this section shall
14 preempt any State law that imposes more restrictive
15 requirements, regulations (including an option pro-
16 tecting a subscriber's choice of a provider of tele-
17 phone exchange service or telephone toll service from
18 being switched without the subscriber's express con-
19 sent), damages, costs, or penalties on changes in a
20 subscriber's service or selection of a provider of tele-
21 phone exchange service ^{or} telephone toll services
22 than are imposed under this section.

23 "(2) PRESERVATION OF COMMISSION AUTHOR-
24 ITY WITH RESPECT TO UNFAIR MARKETING OF SUB-
25 SCRIBER SELECTION FREEZES.—Notwithstanding

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1 paragraph (1). the Commission shall prescribe rules
2 to prevent the marketing or provision in an unfair
3 ~~or~~ ^{and} deceptive manner of an option protecting a sub-
4 scriber's choice of a provider of telephone exchange
5 service or telephone toll service from being switched
6 without the subscriber's express consent.

7 `` (h) RULES OF CONSTRUCTION--

8 `` (1) CHANGE INCLUDES INITIAL SELECTION--

9 For purposes of this section, the initiation of tele-
10 phone toll service to a subscriber by a telecommuni-
11 cations carrier shall be treated as a change in selec-
12 tion of a provider of telephone toll service.

13 `` (2) ACTION BY UNAFFILIATED RESELLER NOT

14 IMPUTED TO CARRIER--No telecommunications car-
15 rier may be found in violation of this section solely
16 on the basis of a violation of this section by an unaf-
17 filiated reseller of that carrier's services or facilities.

18 `` (i) DEFINITIONS.--For purposes of this section:

19 `` (1) SUBSCRIBER--The term `subscriber'

20 means the person named on the billing statement or
21 account, or any other person authorized to make
22 changes in the providers of telephone exchange serv-
23 ice or telephone toll service.

24 `` (2) EXECUTING CARRIER--The term `execut-

25 ing carrier' means, with respect to any change in the

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1 provider of local exchange service or telephone toll
2 service, the local exchange carrier that executed such
3 change.

4 (3) ATTORNEY GENERAL.—The term 'attorney
5 general' means the chief legal officer of a State."

6 (b) NTIA STUDY OF THIRD-PARTY ADMINISTRA-
7 TION.—Within 180 days of enactment of this Act, the Na-
8 tional Telecommunications and Information Administra-
9 tion shall report to the Committee on Commerce of the
10 House of Representatives and the Committee on Com-
11 merce, Science, and Transportation of the Senate on the
12 feasibility and desirability of establishing a neutral third-
13 party administration system to prevent illegal changes in
14 telephone subscriber carrier selections. The study shall in-
15 clude—

16 (1) an analysis of the cost of establishing a sin-
17 gle national or several independent databases or
18 clearinghouses to verify and submit changes in car-
19 rier selections;

20 (2) the additional cost to carriers, per change
21 in carrier selection, to fund the ongoing operation of
22 any or all such independent databases or clearing-
23 houses; and

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1 (3) the advantages and disadvantages of utiliz-
2 ing independent databases or clearinghouses for veri-
3 fying and submitting carrier selection changes.

4 **TITLE II--GWCS AUCTION**
5 **DEADLINE**

6 SEC. 201. ELIMINATION OF ARBITRARY AUCTION DEAD-
7 LINE.

8 Section 309(j)(9) of the Communications Act of 1934
9 (47 U.S.C. 309(j)(9)) is amended by striking "", not later
10 than 5 years after the date of enactment of this sub-
11 section,".

12 **TITLE III--REINSTATEMENT OF**
13 **CERTAIN APPLICANTS**

14 SEC. 301. REINSTATEMENT OF APPLICANTS AS TENTATIVE
15 SELECTEES.

16 (a) IN GENERAL.--Notwithstanding the order of the
17 Federal Communications Commission in the proceeding
18 described in subsection (c), the Commission shall--

19 (1) reinstate each applicant as a tentative se-
20 lectee under the covered rural service area licensing
21 proceeding; and

22 (2) permit each applicant to amend its applica-
23 tion, to the extent necessary to update factual infor-
24 mation and to comply with the rules of the Commis-
25 sion, at any time before the Commission's final li-

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1 censing action in the covered rural service area li-
2 censing proceeding.

3 (b) EXEMPTION FROM PETITIONS TO DENY.—For
4 purposes of the amended applications filed pursuant to
5 subsection (a)(2), the provisions of section 309(d)(1) of
6 the Communications Act of 1934 (47 U.S.C. 309(d)(1))
7 shall not apply.

8 (c) PROCEEDING—The proceeding described in this
9 subsection is the proceeding of the Commission In re Ap-
10 plications of Cellwave Telephone Services L.P.,
11 Futurewave General Partners L.P., and Great Western
12 Cellular Partners, 7 FCC Rcd No. 19 (1992).

13 SEC. 302. CONTINUATION OF LICENSE PROCEEDING; FEE
14 ASSESSMENT.

15 (a) AWARD OF LICENSES—The Commission shall
16 award licenses under the covered rural service area licens-
17 ing proceeding within 90 days after the date of the enact-
18 ment of this title.

19 (b) SERVICE REQUIREMENTS—The Commission
20 shall provide that, as a condition of an applicant receiving
21 a license pursuant to the covered rural service area licens-
22 ing proceeding, the applicant shall provide cellular radio-
23 telephone service to subscribers in accordance with sec-
24 tions 22.946 and 22.947 of the Commission's rules (47
25 CFR 22.946, 22.947); except that the time period applica-

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1 ble under section 22.947 of the Commission's rules (or
2 any successor rule) to the applicants identified in subpara-
3 graphs (A) and (B) of section 304(1) shall be 3 years rath-
4 er than 5 years and the waiver authority of the Commis-
5 sion shall apply to such 3-year period.

6 (C) CALCULATION OF LICENSE FEE.-

7 (1) FEE REQUIRED.-The Commission shall es-
8 tablish a fee for each of the licenses under the cov-
9 ered rural service area licensing proceeding. In de-
10 termining the amount of the fee, the Commission
11 shall consider-

12 (A) the average price paid per person
13 served in the Commission's Cellular Unserved
14 Auction (Auction No. 12); and

15 (B) the settlement payments required to be
16 paid by the permittees pursuant to the consent
17 decree set forth in the Commission's order, In
18 re the Tellesis Partners (7 FCC Rcd 3168
19 (1992)), multiplying such payments by two.

20 (2) NOTICE OF FEE.-Within 30 days after the
21 date an applicant files the amended application per-
22 mitted by section 301(a)(2), the Commission shall
23 notify each applicant of the fee established for the
24 license associated with its application.

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1 (d) PAYMENT FOR LICENSES--No later than May

2 31, 2000, each applicant shall pay to the Commission the
3 fee established pursuant to subsection (c) of this section
4 for the license granted under subsection (a).

5 (e) AUCTION AUTHORITY.--If, after the amendment
6 of an application pursuant to section 301(a)(2) of this
7 title, the Commission finds that the applicant is ineligible
8 for grant of a license to provide cellular radiotelephone
9 services for a rural service area or the applicant does not
10 meet the requirements under subsection (b) of this section,
11 the Commission shall grant the license for which the appli-
12 cant is the tentative selectee (pursuant to section
13 301(a)(1)) by competitive bidding pursuant to section
14 309(j) of the Communications Act of 1934 (47 U.S.C.
15 309(j)).

16 SEC. 303. PROHIBITION OF TRANSFER.

17 During the 5-year period that begins on the date that
18 an applicant is granted any license pursuant to section
19 302, the Commission may not authorize the transfer or
20 assignment of that license under section 310 of the Com-
21 munications Act of 1934 (47 U.S.C. 310). Nothing in this
22 title may be construed to prohibit any applicant granted
23 a license pursuant to section 302 from contracting with
24 other licensees to improve cellular telephone service.

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1 SEC. 304. DEFINITIONS.

2 For the purposes of this title, the following defini-
3 tions shall apply:

4 (1) A PPLICANT.—The term “applicant”
5 means—

6 (A) Great Western Cellular Partners, a
7 California general partnership chosen by the
8 Commission as tentative selectee for RSA #492
9 on May 4, 1989;

10 (B) Monroe Telephone Services L.P., a
11 Delaware limited partnership chosen by the
12 Commission as tentative selectee for RSA #370
13 on August 24, 1989 (formerly Cellwave Tele-
14 phone Services L.P.); and

15 (C) FutureWave General Partners L.P., a
16 Delaware limited partnership chosen by the
17 Commission as tentative selectee for RSA #615
18 on May 25, 1990.

19 (2) C OMISSION.—The term “Commission”
20 means the Federal Communications Commission.

21 (3) COVERED RURAL SERVICE AREA LICENSING
22 PROCEEDING.—The term “covered rural service area
23 licensing proceeding” means the proceeding of the
24 Commission for the grant of cellular radiotelephone
25 licenses for rural service areas #492 (Minnesota

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1 11), #370 (Florida 11), and #615 (Pennsylvania
2 4).

3 (4) TENTATIVE SELECTEE--The term "ten-
4 tative selectee" means a party that has been selected
5 by the Commission under a licensing proceeding for
6 grant of a license, but has not yet been granted the
7 license because the Commission has not yet deter-
8 mined whether the party is qualified under the Com-
9 mission's rules for grant of the license.

10 TITLE IV--ENFORCEMENT
11 PROVISION

12 SEC. 401. ENFORCEMENT OF REGULATIONS REGARDING
13 CITIZENS BAND RADIO EQUIPMENT.

14 Section 302 of the Communications Act of 1934 (47
15 U.S.C. 302) is amended by adding at the end the follow-
16 ing:

17 "(f)(1) Except as provided in paragraph (2), a State
18 or local government may enforce the following regulations
19 of the Commission under this section:

20 "(A) A regulation that prohibits a use of citi-
21 zens band radio equipment not authorized by the
22 Commission.

23 "(B) A regulation that prohibits the unauthor-
24 ized operation of citizens band radio equipment on
25 a frequency between 24 MHz and 35 MHz.

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1 “(2) Possession of a station license issued by the
2 Commission pursuant to section 301 in any radio service
3 for the operation at issue shall preclude action by a State
4 or local government under this subsection.

5 “(3) The Commission shall provide technical guid-
6 ance to State and local governments regarding the detec-
7 tion and determination of violations of the regulations
8 specified in paragraph (1).

9 “(4)(A) In addition to any other remedy authorized
10 by law, a person affected by the decision of a State or
11 local government enforcing a regulation under paragraph
12 (1) may submit to the Commission an appeal of the deci-
13 sion on the grounds that the State or local government,
14 as the case may be, acted outside the authority provided
15 in this subsection.

16 “(B) A person shall submit an appeal on a decision
17 of a State or local government to the Commission under
18 this paragraph, if at all, not later than 30 days after the
19 date on which the decision by the State or local govern-
20 ment becomes final.

21 “(C) The Commission shall make a determination on
22 an appeal submitted under subparagraph (B) not later
23 than 180 days after its submittal.

24 “(D) If the Commission determines under subpara-
25 graph (C) that a State or local government has acted out-

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1 side its authority in enforcing a regulation, the Commis-
2 sion shall reverse the decision enforcing the regulation.
3 “(5) The enforcement of a regulation by a State or
4 local government under paragraph (1) in a particular case
5 shall not preclude the Commission from enforcing the reg-
6 ulation in that case concurrently.
7 “(6) Nothing in this subsection shall be construed to
8 diminish or otherwise affect the jurisdiction of the Com-
9 mission under this section over devices capable of interfer-
10 ing with radio communications.”.

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